

UNITED STATES PATENT AND TRADEMARK OFFICE  
Trademark Trial and Appeal Board  
P.O. Box 1451  
Alexandria, VA 22313-1451  
General Contact Number: 571-272-8500

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Mailed: March 17, 2016

Cancellation No. 92059311  
Cancellation No. 92059733  
Cancellation No. 92059751  
Cancellation No. 92059752

*Bio Clean, Inc.*

*v.*

*Meth Lab Cleanup LLC*

**Elizabeth A. Dunn, Attorney (571-272-4267):**

These cases come up on essentially the same motion, filed by Respondent in each cancellation listed above, to resume proceedings. The motion was contested in Cancellation No. 92059733.

Meth Lab Cleanup LLC owns four registrations which issued pursuant to Trademark Act Sec. 2(f). Three registrations issued on the same date (August 4, 2009), for the same mark METH LAB CLEANUP LLC (LLC disclaimed), and one registration issued January 22, 2013 for the mark METH LAB CLEANUP.

Registration No. 3662396	Training services in the field of clandestine drug lab decontamination and cleanup, in International Class 41.
Registration No. 3662399	Evaluation and testing of illegal clandestine drug lab sites for the presence of hazardous and illegal materials; Evaluation and testing of real estate for the presence of hazardous material, in International Class 42.

Registration No. 3662398	Consultation in the field of clandestine drug lab site decontamination; Decontamination of illegal clandestine drug lab sites, in International Class 40.
Registration No. 4278724	Evaluation and testing of illegal clandestine drug lab sites for the presence of hazardous and illegal material, Evaluation and testing of real estate for the presence of hazardous materials, in International Class 42

On June 6, 2014, Bio Clean, Inc. filed a petition to cancel Registration No. 4278724 (Cancellation No. 92059311), and on August 3, 2014, Bio Clean, Inc. filed petitions to cancel Registration Nos. 3662396 (Cancellation No. 92059733), 3662399 (Cancellation No. 92059751) and 3662398 (Cancellation No. 92059752). Each petition alleges that Petitioner is engaged in meth lab cleanup, and that the registered mark is inconsistent with Petitioner's right to use the term as a descriptive or generic designation; and pleads that the mark as applied to the services is merely descriptive and has not acquired distinctiveness, is generic, and was obtained by fraud. Respondent's answers deny the salient allegations of the petitions to cancel.

I. Proceedings Are Consolidated

Consolidation is discretionary with the Board, and may be ordered upon motion granted by the Board, or upon stipulation of the parties approved by the Board, or upon the Board's own initiative. *See, e.g., Hilson Research Inc. v. Society for Human Resource Management*, 27 USPQ2d 1423 (TTAB 1993). In determining whether to consolidate proceedings, the Board will weigh the savings in time, effort, and expense which may be gained from consolidation, against any prejudice or inconvenience which may be caused thereby. *See Fed. R. Civ. P. 42(a); Regatta Sport Ltd. v. Telux-*

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*Pioneer Inc.*, 20 USPQ2d 1154 (TTAB 1991); and *Estate of Biro v. Bic Corp.*, 18 USPQ2d 1382 (TTAB 1991). Here, the parties to these proceedings are identical, and the issues vary only with the services listed in the subject registrations. Accordingly, Cancellation Nos. 92059311, 92059733, 92059751, and 92059752 are hereby consolidated and may be presented on the same record and briefs. *See Hilson Research Inc. v. Society for Human Resource Management, supra*; and *Helene Curtis Industries Inc. v. Suave Shoe Corp.*, 13 USPQ2d 1618 (TTAB 1989).

The Board file will be maintained in Cancellation No. 92059311 as the “parent case.”<sup>1</sup> From this point on, only a single copy of all motions and papers should be filed, and each motion or paper should be filed in the parent case only, but the caption on the motion or paper should include all consolidated proceeding numbers, listing the “parent case” first.<sup>2</sup> Despite being consolidated, each proceeding retains its separate character and requires entry of a separate judgment. The decision on the consolidated cases shall take into account any differences in the issues raised by the respective pleadings; and a copy of the final decision shall be placed in each proceeding file.

## II. Proceedings Remain Suspended

On September 11, 2014 in the parent case, Respondent moved to suspend proceedings pending the disposition of the civil action between the parties. Inasmuch as the motion was not opposed, the Board granted the motion and suspended

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<sup>1</sup> In Cancellation No. 92059311, to the extent it is not clear from the record, Petitioner’s motion filed August 15, 2014 to disqualify counsel was made moot by the appointment of new counsel for Respondent, which was acknowledged by the Board in its January 14, 2015 order.

<sup>2</sup> The parties should promptly inform the Board of any other Board proceedings or related cases within the meaning of Fed. R. Civ. P. 42, so that the Board can consider whether further consolidation is appropriate.

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proceedings, ordering Respondent to provide a copy of the pleadings filed with the district court. Notwithstanding the Board's order, no district court pleadings are in the record. Accordingly, the following facts are taken from the December 15, 2015 order issued by the district court in *Meth Lab Cleanup LLC v. Bio Clean, Inc.*, C124-1259RAJ, pending in the United States District Court for the Western District of Washington (Seattle), and submitted by Respondent in support of its motion to resume.

With its civil complaint, Respondent pleaded, among other claims, trademark infringement of its federal trademark registrations which are the subject of this proceeding (plus two registrations for the mark METH LAB CLEANUP which are not involved), and Petitioner filed counterclaims to cancel Respondent's registrations on the grounds that the registrations were fraudulently procured, and the registered marks are generic as applied to the services. The court granted Respondent's motion for partial summary judgment as to the counterclaims, and Respondent's claim of federal trademark infringement. With its motion to resume Respondent argues that this order disposes of the civil action between the parties and seeks an order to show because why judgment should not be entered in its favor in this proceeding. Petitioner opposes the motion on the ground that the order granting summary judgment is interlocutory in nature, and is not equivalent to a final order disposing of the district court action.

Suspension of a Board proceeding is solely within the discretion of the Board. *The Other Telephone Company v. Connecticut National Telephone Company, Inc.*, 181

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USPQ 779, 782 (Comm'r Pat. 1974). "All motions to suspend, regardless of circumstances, . . . are subject to the 'good cause' standard." *National Football League v. DNH Management LLC*, 85 USPQ2d 1852, 1855, n.8 (TTAB 2008) *citing* Trademark Rule 2.117(c). A decision by the district court may be binding on the Board whereas a determination by the Board as to a defendant's right to obtain or retain a registration would not be binding or res judicata in respect to the proceeding pending before the court. *New Orleans Louisiana Saints LLC v. Who Dat? Inc.*, 99 USPQ2d 1550 (TTAB 2011) *citing Whopper-Burger, Inc. v. Burger King Corp.*, 171 USPQ 805, 807 (TTAB 1971). Thus, the civil action does not have to be dispositive of the Board proceeding to warrant suspension, it need only have a bearing on the issues before the Board. Trademark Rule 2.117(a). *Accord* 6 MCCARTHY ON TRADEMARKS AND UNFAIR COMPETITION §32:47 (4th ed. updated October 2015) ("It is standard procedure for the Trademark Board to stay administrative proceedings pending the outcome of court litigation between the same parties involving related issues.").

Unless it disposes of all the issues before the court, a grant of summary judgment is not a final disposition of the civil action. 10A Charles Alan Wright et al., FED. PRAC. & PROC. CIV. § 2864 (3d ed.) ("an appeal of a decision on a Rule 56 motion is available only if the trial court's determination has the effect of completely disposing of the action."). Here, the civil action between the parties continues, no final order has issued, and the Board finds that suspension pending the final disposition of the district court action remains appropriate. Respondent's motion to resume proceedings is DENIED.

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Within twenty days after the final determination of the district court action, the parties shall notify the Board so that this proceeding may be called up for appropriate action. Such notification to the Board should include a copy of the pleadings and any final order or final judgment which issued in the civil action.

During the suspension period, the parties shall notify the Board of any address changes for the parties or their attorneys.